IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2291 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SAIRABANU W/O MOHAMMAD ISHAQUESHAIKH

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 2291 of 2000

MR YOGESH S LAKHANI for Petitioner No. 1

Mr S J Dave, APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 23/07/2001

ORAL JUDGEMENT

By consent of the learned Advocates for the parties, this application is heard and disposed of finally.

This is an application under section 439 of the Code of Criminal Procedure, 1973 for enlargement of the petitioner on bail in connection with an offence

registered before Dariapur police station being C.R. No.I-22/1998. The matter is pending before the Sessions Court being City Sessions Court, Ahmedabad as Sessions Case No.319/98, 352/98 and 168/99. It appears from the record that the learned Addl.City Sessions Judge was required to pass an order on 13.9.1999 below application Exh.1 in sessions case no.319/98. By the said order, the learned Addl.City Sessions Judge of the City Sessions Court, Ahmedabad, was pleased to direct that certain accused persons being accused No.5,6,7, and 8 be ordered to be discharged from the offence with which they stood charged under Section 227 of the Cr.P.C, 1973. The learned Judge also passed an order to frame charge against accused No.1,2,3 and 4 for offences punishable under sections 120, 120B of IPC and other sections as stated in the order dated 13.9.1999, which is placed on record at page 21. The petitioner herein is shown to be accused no.1 in the aforesaid order.

2. The petitioner has contended before this court that there is no material or evidence against the petitioner and she has been wrongly involved and, therefore, the present petitioner may be enlarged on bail.

3. This application was strongly opposed on behalf of the State. Mr S J Dave, learned APP has objected to the grant of the application stating that there is prima facie case against the petitioner and therefore, this petitioner cannot be enlarged on bail.

4. It is found from the order of the learned Judge that he has recorded a finding that there is prima facie case against this petitioner, after appreciation of the materials placed before him. It is to be considered that so far as the other four accused persons are concerned, they have been ordered to be discharged by the learned Addl.Sessions Judge but so far as the present petitioner and three other accused persons are concerned, the learned Addl.City Sessions Judge has objectively considered that there is prima facie case and, therefore, they cannot be discharged. The present petitioner is one of those accused persons who has not been discharged by the learned City Sessions Judge.

5. Learned Advocate for the petitioner has contended that looking to the material on record, it cannot be said that there is a prima facie case against the present petitioner. In support of the said argument, certain statements and other materials were relied upon by him in order to argue that there is no prima facie material

against the present petitioner. It is, therefore, contended on behalf of the petitioner that in view of the material on record, it cannot be said that there is material to show that the petitioner had done something to wage war against the Government of India and, therefore, she need not be detained in jail for a long time. It is also contended that the petitioner is in jail for quite a long time. It is also contended that she is a lady and, therefore, the matter should be considered from that angle also. On the aforesaid submission, it has been submitted that the petitioner be enlarged on bail.

6. As said above, the learned Addl.City Sessions Judge has recorded a positive finding that there is a prima facie case against the present applicant for the offence said to have been committed by the accused persons in the aforesaid Sessions Case. Even the charge is ordered to be framed against the present petitioner along with the other three accused persons. The learned Addl.City Sessions Judge has also recorded prima facie finding that there is prima facie case of criminal conspiracy so far as the present applicant and other three accused persons are concerned. It is true that the above order is in challenge before this court. On one hand, the accused persons including the present petitioner against whom the charge is ordered to be framed, have preferred Revision Application before this Court challenging the order of the learned Addl.City Sessions Judge, directing to frame charge against them, at the same time, the State is also reported to have filed Criminal Revision Application before this Court against the order of the learned Addl.City Sessions Judge discharging the four accused persons from the aforesaid case. Therefore, there are two rival criminal revision applications pending before the Court. In that view of the matter, it would not be in the fitness of things to go into detailed discussion on evidence at this stage. The learned Advocate for the petitioner has also contended that the State has obtained stay order against the trial before the learned City Sessions Judge and, therefore, the trial is likely to be delayed. Let us take it that this fact is true and the court has granted stay order against the trial of the case against those four accused persons against whom charge is ordered to be framed by the learned Addl.City Sessions Judge. At the same time, it is also required to be considered that if the trial proceeds against these four persons and ultimately if the revision of the State is allowed, then, there would be complications in the trial before the Sessions Court. At the same time, if the State had not

obtained stay against the trial, then probably, the petitioner and other three accused who have preferred Revision might have applied for stay of trial against them since they would be in a position to argue over the trial against them pending the Revision Application, would have adverse effect on their interest. Ultimately, if their revision application is allowed, the entire process of their trial before the Sessions Court would be of no use and it would be a futile exercise and waste of money, energy etc. Therefore, even if there would not be any stay in the Revision of the State, there could be stay order obtained by the petitioner and other three accused persons in their revision applications. Therefore, simply because the State has obtained stay against the trial will not be a ground for enlarging the present petitioner on bail. Moreover, it is required to be considered that so far as the stage of bail is concerned, the court is required to consider prima facie case. As said above, the learned Addl.City Sessions Judge has already recorded a finding that there is prima facie case against the petitioner. Moreover, even if there is prima facie case, the accused persons can be enlarged on bail in proper case. In the present case, the offence said to have been committed is grave in nature and, therefore, considering the nature of the offence allegedly committed by the petitioner along with the other accused persons, it would not be in the interest of justice to enlarge the petitioner on bail. It is also required to be considered that so far as criminal conspiracy is concerned, direct evidence may not be available in all cases of criminal conspiracy. It is more so, when the present case touches an offence to 'wage war' against the Union of India. Therefore, direct evidence cannot be insisted upon. Under the circumstances, the prosecuting agency as well as the court may be required to depend upon circumstantial evidence. Sufficiency of evidence cannot be gone into at this stage for the purpose of finding out if there is prima facie case against the petitioner. In the above view of the position, I am of the clear opinion that at this stage, the petitioner cannot be and should not be enlarged on bail having regard to the nature of offence said to have been committed by the petitioner.

7. An attempt was made to argue that the house of the petitioner is said to have been used in commission of the alleged offence. Nevertheless, it is not possible at this stage to record a finding that this did not happen within the knowledge and consent of the petitioner.

8. In the facts and circumstances and for the foregoing reasons, this application is without any merit and is required to be dismissed. Accordingly, this application is ordered to be dismissed. Notice discharged.

23.7.2001 [D P Buch, J.]
msp